

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PUBLIC POWER GENERATION)	Case No.: _____
AGENCY, a Nebraska nonprofit joint agency,)	
)	
Plaintiff,)	
)	MOTION TO QUASH OR MODIFY
vs.)	SUBPOENAS
)	
MIDWEST ENERGY EMISSIONS CORP.)	
and MES INC.,)	
)	
Defendants.)	
)	

COMES NOW the Plaintiff, Public Power Generation Agency (“PPGA”), by and through the undersigned counsel, and for its Motion to Quash or Modify Subpoenas pursuant to Fed. R. Civ. P. Rule 45(d)(3), states as follows:

1. On May 19, 2022, the Clerk of Court of the United States District Court for the District of Delaware issued two subpoenas, directed to PPGA, in the matter of Midwest Energy Emissions Corp. and MES Inc. v. Arthur J. Gallagher & Co., Civil Action No. 19-1334. A copy of the two subpoenas at issue are attached.
 - a. The first subpoena commands the production of certain documents, identified in an attached Exhibit A, by PPGA on June 10, 2022, at the Hampton Inn in Hastings, Nebraska (the “Production Subpoena”).
 - b. The second subpoena commands PPGA appear for a deposition on June 10, 2022, at the Hampton Inn in Hastings, Nebraska, on matters set forth in Exhibit B (the “Deposition Subpoena”).
2. According to file stamps on the two subpoenas, both the Production Subpoena and Deposition Subpoena were received by the Adams County Sheriff, John Rust, on June 3, 2022. *See* Exhibit 1 (Production Subpoena) and Exhibit 2 (Deposition Subpoena), attached hereto and incorporated herewith.
3. PPGA received the subpoenas from the Adams County Sheriff on or about June 6, 2022, at 4:50 p.m.
4. No Exhibit B was attached to the Deposition Subpoena. *See* Exhibit 2.

5. The docket of the United States District Court of the District of Delaware Matter No. 19-1334 includes no Notice of Service for either subpoena, as of the date of this Motion. *See* Exhibit 3 (Civil Docket for Case No. 19-1334).

6. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that fails to allow reasonable time to comply, requires disclosure of protected materials, or subjects a person to undue burden. Fed. R. Civ. P. Rule 45(d)(3)(A) (2022).

7. The court may also quash or modify the subpoena where the subpoena requires the disclosure of confidential commercial information. Fed. R. Civ. P. Rule 45(d)(3)(B).

8. The Production Subpoena must be quashed or modified for the following reasons:

- a. Defendants have allowed just three days for PPGA to comply with the subpoena;
- b. The Production Subpoena demands production of protected materials and/or confidential commercial information; and
- c. The Production Subpoena subjects PPGA to an undue burden, as the scope of the demanded production is irrelevant, overly broad, and not proportional to the needs of the case.

9. The Deposition Subpoena must be quashed or modified for the following reasons:

- a. Defendants have allowed just three days for PPGA to comply with the subpoena;
- b. The subpoena demands testimony “on matters set forth in Exhibit B,” but no Exhibit B was provided, *see* Exhibit 2; and
- c. Persons who may be required to provide testimony are unavailable, due to previously-scheduled obligations.

10. The undersigned has provided an affidavit regarding the veracity of the attached documents. *See* Exhibit 4 (Affidavit of Patrick T. Vint).

11. Due to the abbreviated timeframe caused by Defendant’s delayed service of the subpoenas in question and impending date of compliance, PPGA requests permission to supplement this motion with evidence of the undue burden caused by the Production Subpoena, as drafted.

12. PPGA also reserves the right to assert additional objections and bases for its

Motion, should Exhibit B to the Deposition Subpoena be later produced.

WHEREFORE Public Power Generation Agency respectfully requests this Court quash or modify both pending subpoenas for failing to allow reasonable time to comply, pursuant to Fed. R. Civ. P. Rule 45((d)(3)(A)(i). Public Power Generation Agency further requests this Court quash or modify both pending subpoenas for the reasons set forth in this motion, and for any other relief which this Court deems necessary and proper.

DATED: June 9, 2022.

PUBLIC POWER GENERATION AGENCY, a
Nebraska nonprofit joint agency, Plaintiff,

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